

Service Date: June 16, 1992

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF the Application)	UTILITY DIVISION
of MOUNTAIN WATER COMPANY for)	
authority to increase rates and)	DOCKET NO. 92.4.19
charges for water service to its)	
Missoula, Montana customers.)	ORDER NO. 5625

PROCEDURAL ORDER

Introduction

Under the authority of ARM 38.2.2702, and following issuance of a proposed procedural order, the Commission enters this order setting forth the procedure to be followed in Docket No. 92.4.19. The schedule in >4 is modified from the Proposed Procedural Order service dated May 27, 1992, to satisfy Commission scheduling requirements.

In this Order the term "parties" includes the Applicant Mountain Water Company (Company, Applicant or Mountain Water) and all intervenors. Individuals or entities are not parties unless they have been granted intervention by the Commission.

Copies of all pleadings, motions, discovery requests, prefiled testimony and briefs shall be filed with the Commission and served on all parties. Copies of all discovery responses shall be served on the Commission, on the party making the discovery requests and on parties who request the responses pursuant to paragraph 11 of this Order. Parties shall file an original and ten copies with the Commission of motions, testimony, briefs, and documents directed to the

Commission. Service upon the parties shall be upon the parties' attorney of record, if applicable, and such other individuals as may be reasonably designated by the attorney of record.

All dates listed in the following schedule are mailing dates. Parties must mail all material by the most expeditious method available at reasonable cost. Parties should be considerate of the obligations imposed upon other parties by the following schedule. Parties may make arrangements among themselves for the use of express mail.

Schedule

Unless modified, the following schedule shall apply in Docket No. 92.4.19:

- (a) July 7, 1992: Final day for written discovery directed to Mountain Water.
- (b) July 24, 1992: Final day for completion by Mountain Water of all answers and responses to written discovery directed to Mountain Water by other parties pursuant to paragraph 4(a).
- (c) August 10, 1992: Final day for completion and service upon Mountain Water and other parties of the prepared testimony and exhibits of all parties except Mountain Water.
- (d) August 27, 1992: Final day for written discovery directed to all parties by Mountain Water; final day for intervenor discovery to parties other than Mountain Water.
- (e) September 14, 1992: Final day for completion of answers by all parties to written discovery made pursuant to paragraph 4(d).
- (f) September 29, 1992: Final day for service of rebuttal testimony by Mountain Water and testimony of other parties which is in rebuttal to testimony filed pursuant to paragraph 4(c).
- (g) October 14, 1992: Final day for written discovery directed to all parties that filed rebuttal testimony pursuant to paragraph 4(f); such discovery must be directly related to the rebuttal testimony.
- (h) October 29, 1992: Final day for completion of answers by all parties to discovery made pursuant to paragraph 4(g).
- (i) November 5, 1992: Final day to provide the Commission and parties with a witness list indicating the sequence that witnesses will be called by the parties at the hearing; final day for any party that intends to introduce evidence, data requests or other discovery as part of its basic case, to notify all parties of the specific data requests or other discovery it plans to so introduce.
- (j) November 12, 1992: Opening day of hearing in Docket No. 92.4.19.

Intervention

Any person interested in and directly affected by the subject matter of the hearing may file a petition for intervention on or before June 16, 1992. The petition to intervene shall

contain the docket number(s), title of proceeding(s), and pleadings pursuant to Commission rules. A petition shall disclose the name and address of the petitioner; the name and address of petitioner's attorney, if any; a clear, concise statement of petitioner's direct and substantial interest in the proceeding; petitioner's position in regard to the matter in controversy; a statement of the relief sought, if appropriate; and a request for either general or special intervention.

No petition to intervene shall be filed after June 16, 1992, except upon good cause shown why it was not timely filed and petitioner's covenant that the intervention, if granted, will not delay or prejudice the proceeding in the Docket. A petitioner not desiring to broaden the issues of the original proceeding should file a petition for general intervention. A petitioner desiring to broaden the issues shall file a petition for special intervention. The Commission may consider petitions to intervene not already allowed pursuant to >5 at hearing or prior to hearing and shall afford original parties an opportunity to be heard. By order or by oral ruling at the hearing, the Commission may grant late petitions to intervene if they disclose that petitioner has a substantial interest in the subject matter of the hearing, that participation will be in the public interest and/or that granting the intervention will not unduly broaden the issues in the proceeding. The Commission may dismiss an intervenor upon a subsequent demonstration that intervenor does not have a substantial interest in the proceeding or that the public interest will not be served by the intervention, upon notice and a reasonable opportunity to be heard.

Discovery

The term "discovery" as used in this order includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as informal "data requests." The Commission urges parties to conduct their discovery as much as possible through the use of data requests.

Separate data requests should be submitted and numbered for each Docket. Data requests must be numbered consecutively throughout these Dockets, beginning with the number one (1) for each party (e.g., MW-1; PSC-1; MCC-1). All data requests must include at the beginning of each request a short description (approximately five words or less) explaining the subject of the data request. Other identifying information, such as the witness to whom the

request is submitted, exhibit no., page no., etc., may be included in addition to, but not in lieu of, the subject of the request. Each party should attempt to keep descriptions consistent from one request to another.

Multi-part requests may be used. Each part of a multi-part request should be denoted by a lower case letter (a, b, c, d and e.). Requests should be limited to five parts (a-e) without any sub-parts. If additional parts are necessary, additional requests should be made. A single part request should be denoted by the request number only.

Examples of acceptable requests follow:

Acceptable Data Request Format

PSC-500 RE: Purchased Gas Contracts
 Witness - Doe, Page JQD-4, Lines 13-15.

Please provide the origination and expiration date for each contract.

PSC-501 RE: Bypass
 Witness - Roe, Page JAR-14, Lines 11-14.

- a. What risks of bypass would be avoided by the shareholders as a result of the Company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the Company's proposed treatment?
- c. What risks of bypass would be shared by ratepayers and shareholders as a result of the Company's proposed treatment?

Written discovery and data requests will be served on all parties. Unless otherwise agreed, copies of answers to all written discovery and data requests will be served only on parties specifically requesting them and on the Commission. Here, the term "parties" includes the parties, their attorneys, and witnesses testifying on matters to which the answers relate. A party should inform that party to whom the data requests or written discovery is directed that it wishes to obtain material requested by another party. The Commission encourages all parties to

scrutinize the material provided in these Dockets before submitting data requests to limit unnecessary requests. The Commission further encourages parties to discuss preferred format for data requests and responses, consistent with paragraphs 9 and 10 of this Order.

Parties have five (5) days from receipt of written discovery or data requests, or until a response is due, whichever is less, to file objections to the request(s). Notice of objection shall be served upon the Commission and all parties of record. The Commission may dispose of such objections by prompt ruling or may schedule argument on the objections. Failure to object promptly will be deemed acceptance of the requests. Parties are encouraged to try to resolve concerns about requests before filing objections.

Any requesting party dissatisfied with the response to any written discovery or data request must serve its written objection(s) simultaneously upon the Commission and parties within five (5) days after receipt of such response. The Commission may dispose of such objection(s) by prompt ruling or may schedule argument on the objection(s). The Commission will issue its order either sustaining or overruling the objection(s), and set a deadline for satisfactory response(s), if required. Parties are encouraged to try to resolve objections and obtain clarification to responses before resorting to objections before the Commission.

The Commission may allow parties to submit written discovery or data requests after their deadlines if good cause is shown for failure or inability to meet the deadline.

Unless excused by the Commission, failure by a party to answer data requests or other discovery from any party may result in:

- (a) An order prohibiting the disobedient party from supporting or opposing related claims, or from introducing related matters in evidence;

- (b) An order striking pleadings, testimony or parts, or staying further proceedings until the request is satisfied, or dismissing the action or proceeding or any part.

Neither the Commission nor the Commission staff is a party to this proceeding.

Commission staff has the rights and responsibilities of parties under Commission rule. See ARM 38.2.601(n). The Commission directs its staff to make every good faith effort to meet the discovery deadlines imposed on parties in this Order. However, Commission staff has the overriding responsibility to advise the Commission and the duty to ensure that all issues are thoroughly explored on the record. The Commission reserves the right for its staff to conduct discovery beyond the deadlines contained in this Order if issues are not adequately examined. Failure or inability to respond to this late discovery may result in a continuance of the scheduled hearing or in the reservation of certain issues for a future proceeding.

Testimony and Evidence

All proposed exhibits and prefiled written testimony shall be marked for identification before the hearing as arranged in advance with the court reporter.

At the hearing, prefiled direct, answer and rebuttal testimony will be adopted into the record, eliminating the need to retype prepared testimony into the transcript.

Parties shall make copies available of any documents not previously filed with the Commission which will be used for cross-examination, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each Commissioner, the Commission staff, and all parties. This last requirement may be waived if the documents to be

introduced are bulky, or for other good cause, upon prior arrangement with the Commission and all parties.

By leave of the presiding officer, parties may be permitted to present "live" rebuttal testimony only in direct response to an issue raised for the first time in cross-examination or the testimony of a public witness.

The Commission may allow citizens and citizen groups to make statements without submitting prepared written testimony; in addition, if they have prepared written testimony, they may read it or have it adopted directly into the record.

The rules of evidence applicable in the District Courts of the State of Montana at the time of the hearing in this Docket will be used at the hearing.

Prehearing Motions and Conferences

Motions by any party, including motions to strike prefiled testimony and motions concerning procedural matters shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs unless otherwise requested by a party. The party requesting oral argument shall notice it for hearing before the Commission.

The Commission may set a final Prehearing Conference to discuss settlement of any issues in the proceeding; simplification of issues; possibility of obtaining admissions of fact and documents; distribution and marking of written testimony and exhibits prior to the hearing; and other procedural matters as may aid in the disposition of the proceeding.

Nothing in this Order shall be construed to limit the legally established right of the Commission or its staff to inspect the books and accounts of Mountain Water at any time.

Witness Sequence List

Mountain Water shall provide the Commission lists indicating the witness sequence for the hearing in this Docket, which Mountain Water and any other parties to this Docket shall negotiate among themselves. Mountain Water may inform the Commission and parties of the final sequence in writing or by telephone directed to the parties or their attorneys of record and the Commission staff attorney.

Done and Dated this 10th day of June, 1992 by a vote of 5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DANNY OBERG, Chairman

WALLACE W. "WALLY" MERCER, Vice Chairman

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

TED C. MACY, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)